

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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)	
In the Matter of)	
)	
Petition of the Embarq Local Operating Companies)	
For Forbearance Under 47 U.S.C. §160(c) From)	
Application of <i>Computer Inquiry</i> and certain)	
Title II Common-Carrier Requirements)	
)	WC Docket No. 06-147
Petition of the Frontier and Citizens ILECs For)	
Forbearance Under Section 47 U.S.C. §160(c) From)	
Title II and <i>Computer Inquiry</i> Rules With Respect)	
to Their Broadband Services)	

REPLY COMMENTS IN SUPPORT OF PETITION

The Embarq Local Operating Companies, hereby respectfully Reply to Comments filed in response to the above-captioned Petition of the Frontier and Citizens ILECs on September 13, 2006.

The National Telecommunications Cooperative Association (“NTCA”) expresses concern that the Commission may paint with too broad a brush in granting forbearance, forcing smaller rural ILECs to offer broadband services on a private carriage basis, rather than continuing to offer such services pursuant to the current tariffing and pooling options.¹ Embarq believes NTCA’s concern is unwarranted, provided the Commission grants forbearance in the manner requested by Embarq and other petitioners.²

Specifically, Embarq seeks relief from the mandatory application of Title II requirements regarding tariffs, prices, cost support, price caps and price flex in order to have the flexibility to provide the broadband services at issue on a common-

¹ National Telecommunications Cooperative Association Initial Comments, WC Docket 06-147, filed September 13, 2006, at p. 3.

² Embarq Petition for Forbearance, WC Docket No. 06-147, filed July 26, 2006, at p. 2. *See also*, Frontier and Citizens Petition for Forbearance, WC Docket No. 06-147, filed August 4, 2006, at p. 8, AT&T Petition for Forbearance, WC Docket No. 06-125, filed July 13, 2006, at pp. 9-10, and BellSouth Petition for Forbearance, WC Docket No. 06-125, filed July 20, 2006, at p. 8.

carriage or private-carriage basis, similar to the flexibility provided by the Commission, in its *Wireline Broadband Order*, [citation omitted] for broadband transmission services that are used to access the internet and the same as granted Verizon in its forbearance petition [citation omitted].

The forbearance requested by Embarq and the other Petitioners presents no threat to NTCA's members that desire to continue to offer broadband services on a common-carriage, tariffed basis.

Sprint Nextel³ extols the virtues of the AdHoc's Reply Comments⁴ filed August 31, 2006 in this and the RBOC Forbearance Docket (WC Docket No. 06-125) as representing market-savvy consumers of broadband services that oppose forbearance. However, a careful reading of AdHoc's Reply Comments demonstrates an intent to cloud the issues in these dockets by mixing services with facilities; attempting to create an argument that disparages Embarq's and the other Petitioners' disclaimer of forbearance for DS1 and DS3 special access services and TDM-based services.

AdHoc claims that TDM service is a meaningless category, further explaining that it is simply a technology, thus implying that it would be improper for the FCC to forbear on the basis of a particular technology. Embarq disagrees. The FCC has established precedent for taking action on the basis of different technology in order to provide carriers the incentive to deploy broadband facilities. In the *TRO*, the FCC drew a line between old and new technologies in determining to remove unbundling obligations from packet technology.⁵

Several parties have advocated drawing a bright line between "old" and "new" investment in network architectures and using such a division to articulate our unbundling requirements. Others contend that we should make no such distinction. Based on our evaluation of impairment, as informed by the two factors noted above,

³ Sprint Nextel Corporation's Comments in Opposition to Petition for Forbearance, WC Docket No. 06-147, filed September 13, 2006, at p. 3.

⁴ Reply Comments of AdHoc Telecommunications Users Committee, WC Docket Nos. 06-125 and 06-147, filed August 31, 2006, at pp. 19-22.

⁵ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978 (2003) at ¶ 293 ("TRO").

we determine that drawing such a bright line is practical, if the line is drawn between legacy technology and newer technology. In fact, we conclude that such a line is best drawn based on technological boundaries rather than transmission speeds, bandwidth, or some other factor – the technical characteristics of packet-switched equipment versus TDM-based equipment, for example, are well-known and understood by all members of the industry.


The FCC obviously believes that the concept of TDM-based services is not meaningless, but in fact is well understood and a suitable demarcation point for defining regulatory obligations. And, while this proceeding and the RBOC Forbearance Docket are not Section 251 unbundling cases, the point from the *TRO* is still valid; the Commission can, and has, distinguished between older TDM-based services, and the newer packet-switched and non-TDM based optical networking, optical hubbing and optical transmission services for which Embarq and the other Petitioners seek forbearance.

Furthermore, the FCC clearly understands that TDM-based services include DS1 and DS3 special access services; services offered today, and that will continue to be offered after forbearance is granted in this docket, pursuant to Section 7.2.8 of Embarq FCC Tariff No. 1.

In summary, the legal framework and the factual record established in this docket and the RBOC Forbearance Docket applies to and requires the grant of forbearance in this docket.

Respectfully submitted,

Embarq Local Operating Companies

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September 27, 2006

Certificate of Service

I hereby certify that I have this 27th day of September 2006 served the following parties with a copy of the foregoing Reply Comments in Support of Petition in WC Docket No. 06-147 by the method noted.

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A handwritten signature in cursive script, appearing to read "Craig T. Smith", written in dark ink.

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